IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 36087 of 2004(U)

OS.7/2001 of MUNSIFF COURT, ALATHUR
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PETITIONER:

ANTONY, S/O. ULAHANNAN,
AGRICULTURIST, CHERUSSERY VEEDU, CHEMBILAVU KARA,
KIDANGOOR VILLAGE, MEENACHIL TALUK,KOTTAYAM DIST.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

KURIAKOSE, S/O. THOMA,
PARACKAL VEEDU, POOLAKKACHAL, KORENCHIRA POST,
KIZHAKKENCHERRY AMSOM & VILLAGE, ALATHUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.JOHN JOSEPH(ROY)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP.(C)NO.36087/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALE DEED NO.1295/78 ON THE FILE OF SRO, ALATHUR.

EXT.P2:- COPY OF THE BASIC TAX RECEIPTNIN THE NAME OF THE PETITIONER.
EXT.P3:- COPY OF THE SALE DEED NO.1297/78 ON THE FILE OF SRO, ALATHUR.

EXT.P4:- COPY OF THE PLAINT IN OS.7/01 ON THE FILE OF MUNSIFF COURT, ALATHUR.

EXT.P5:- COPY OF THE COMMISSION REPORT DT. 19.1.01 IN OS. 7/01.

EXT.P6:- COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT IN OS.7/01.

EXT.P7:- COPY OF THE SALE DEED NO.1971/94 ON THE FILE OF VADAKKENCHERRY SRO.

EXT.P8:- COPY OF THE COMMISSION REPORT DT 9.7.02 SUBMITTED BEFORE THE MUNSIFF COURT, ALATHUR.

EXT.P9:- COPY OF THE OBJECTION DT. 26.8.02 SUBMITTED TO EXT.P8.

EXT.P10:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA 1205/02 IN OS. 7/01.

EXT.P11:- COPY OF THE OBJECTION TO EXT.P10.

EXT.P12:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA. 731/2004 IN OS. 7/01.

EXT.P13:- COPY OF THE OBJECTION TO EXT.P12.

EXT.P14:- COPY OF THE COMMON ORDER DT. 23.9.04 PASSED IN IA. 1205/02 AND IA 731/04 IN OS. 7/01 ON THE FILE OF MUNSIFF COURT , ALATHUR.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.36087 OF 2004

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Dated this the 3rd day of August 2007

JUDGMENT

This writ petition is filed to set aside the order of the Munsiff's Court, Alathur in I.A.No.731 of 2004 in O.S.No.7 of 2001. The suit is one for permanent injunction wherein the plaint schedule property is described to have an extent of 1 acre and 50 cents. Now the plaintiff wants to incorporate an amendment whereby he wants to substitute the extent as 2.27 acres. According to him, it is the property covered by Document No.1295 of 1978 and the property now claimed by him is 2 acres and 27 cents lies within the 4 boundaries of the said document. The learned Munsiff had considered the matter. I think he had gone a step further as if he is determining the fate of the parties in an amendment application which is not expected to be done. It may be true that the plaintiff's case may not be correct and it has to be thrown out at a later stage. It is a settled proposition of law that it is not the extent in the document that alone governs the field of entitlement of the property, but there are various other factors such as measurements, descriptions and boundaries. When there is a discrepancy

between the survey number, extent, etc., this court has held that the boundaries will prevail. Further there are decisions to the effect that the sure test which the court may adopt is the fact which is having the least error. Therefore by simply allowing an amendment application on the basis of a prayer will not deprive the defendant of his right in the property if he has. The court should not have considered the Commissioner's plan and report at that stage for considering the amendment application.

2. Learned counsel for the respondent has cited before me the decision of a Division Bench of this court reported in ***Kalpakamani v. Shajathan(2005(3) ILR 860).*** In that case the court held that the supervisory jurisdiction of the court could be invoked only to correct the jurisdictional errors committed by the lower courts. When a court for consideration of an application travels beyond what it is expected to do so, it amounts a jurisdictional error and therefore this court is bound to interfere with such a case. Therefore the order suffers from infirmity which requires correction under the supervisory jurisdiction of this court under Article 227 of the Constitution of India and therefore the order under challenge is set aside and the application for amendment is allowed. It is made clear that by merely allowing the amendment it shall not be taken that the plaintiff is entitled to the property. The plaintiff has to succeed to the hilt that the

property now claimed by him comes within the 4 corners of the document relied on by him. The defendant is to be permitted to file additional written statement raising all contentions and thereafter the court shall dispose of the matter in accordance with law.

C.R.P. is allowed as above.

M.N.KRISHNAN, JUDGE

Cdp/-